

## **The complaint**

Mr R has complained about his boat insurer Zurich Insurance Company Ltd because it has declined his claim for damage suffered by his boat whilst at a boatyard for maintenance.

## **What happened**

In June 2023 Mr R's boat had been at a yard for maintenance and he'd received a message to say the yard were ready to put the boat back in the water. He then got a message to say there was a hole in the side of the boat and it couldn't be returned to the water. Mr R felt the boatyard must have damaged the boat whilst moving it. He made a claim to Zurich.

Zurich had a surveyor assess the boat. Mr R felt the surveyor had a conflict of interest as the surveyor seemed to know the boatyard owner. The surveyor, viewing the boat with Mr R and the boatyard's owner, said the boat was rotten in a number of places – and that the hole had occurred because of rot, he hadn't seen anything that made him think the boatyard had caused damage. He said the boat, even if the hole was fixed, was not in a seaworthy state.

Having considered the surveyor's report, and noted exclusions on the policy, Zurich declined the claim. It considered cancelling the policy also, however it didn't do that and the policy lapsed at renewal.

Mr R was unhappy. He believed the boatyard had damaged the boat. And he said, apart from the hole, the boat was seaworthy as he'd been using it. And he'd clearly been taking reasonable care of the boat because it was during maintenance to replace certain timbers (on the other side of the boat) that the damage subject of the claim had been caused. Mr R said there had been timber in good condition directly in front of the hole – and that had been damaged too. He said he could fix the hole – but if Zurich maintains the boat is unseaworthy, he won't be able to insure it again. He complained to the Financial Ombudsman Service.

Our Investigator said she was satisfied there was no conflict of interest and that how the damage had occurred (whether by accident or negligence of the boatyard) wasn't really material. That was because she was satisfied, given the evidence presented that the boat was suffering from rot and that its condition had most likely been the dominant cause of the damage. She said she hadn't seen any pictures of the boat showing unaffected timbers. Noting relevant policy exclusions, she was satisfied Zurich's decline had been fair and reasonable. So she did not uphold the complaint.

Mr R said the photos our Investigator had seen were the very same ones which showed timber in a good condition (a piece of timber called the running strake). He said the strake is positioned immediately in front of the timber panels (chines) that had the hole in them. Mr R explained that, in his view, Zurich's argument about rot was flawed when the strake, also damaged, was not rotten. He thinks there must have been a severe impact. He said he didn't think it was fair for one of the exclusions to be relied upon – it was about not keeping the boat in a seaworthy condition, but this damage had occurred on land. He reiterated that he'd maintained the boat, adding that he had a safety certificate, valid for four years, issued in 2021. He said he'd shown the surveyor's report was wrong and he concluded the surveyor had been wrong to declare the boat was unseaworthy.

The complaint was referred for an Ombudsman's decision. Subsequently Zurich provided further evidence. Its surveyor provided their view on the running strake and a video taken, during the visit, of rotten timbers crumbling to dust between fingertips.

When I reviewed the complaint I found my view was largely the same as our Investigator. However, I noted the new evidence Zurich had provided and that Mr R had said he felt that some evidence he had provided had not been given due consideration. So I issued a provisional decision to share my views on the complaint and why I, taking into account all the available evidence, felt Zurich's decline was fair and reasonable. I also had one of our Investigators share with Mr R the new evidence Zurich had provided.

Following issue of my provisional decision, neither Zurich nor Mr R offered any reply within the deadline given. As the deadline has now passed the complaint has returned to me for a final review.

### **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

These were my provisional findings:

*"Essentially this is a relatively simple issue for me to decide. Mr R's policy covers him for damage to his boat. But like many policies of its type, there are exclusions to cover. The two of note are:*

*"Loss or damage caused by wear, tear, depreciation or gradual deterioration if the Craft is over 3 years old, unless you are able to provide evidence that the Craft has been maintained appropriately";*

*and;*

*"We will not pay for any claims arising from..... your failure to maintain the Craft in a seaworthy condition".*

*So if Zurich can show that damage was caused by the things listed in the first exclusion and the boat was not appropriately maintained, or because the boat was not kept 'seaworthy' in line with the second exclusion, then it's decline will be fair and reasonable.*

*Zurich says the boat was rotten, that the damage occurred because of that. I'm satisfied that rot is a wear and tear issue, it causes gradual deterioration over time. I also accept, in general terms, that it makes sense to say that a rotten boat is not seaworthy – and that would be the case even if the rot was first noticed on land, as opposed to any damage occurring at sea. So, on the face of it, those two exclusions seem like they are relevant to the dispute at hand.*

*Neither I, nor Mr R, nor Zurich's claim handlers are experts in boats, boat repairs, structure and maintenance. Here, as with many complaints, it is the evidence of experts that will be most compelling. In this case that means Zurich's surveyor. I'm satisfied that Zurich's surveyor is a suitably qualified expert. I've seen Mr R's concerns about the surveyor, including that the surveyor spoke to the boatyard's owner alone before the assessment. I'm satisfied that there is nothing of concern that makes me think a conflict of interest has likely compromised the evidence presented by the surveyor.*

*The surveyor found rot, or timbers in a poor condition likely suffering rot, in several areas of the boat. He found the chines in the area of the hole were rotten. He found the remaining ends of the running strake (in the vicinity of the edges of the hole in the chines) were rotten. He noted the boatyard owner had told Mr R the timbers were in very poor condition (likening them to cheese). He was satisfied that the boat had not suffered damage due to an impact or similar – but that the hole had appeared due to touch and because of the rot. He concluded the boat was not seaworthy.*

*I've considered what Mr R has said about the strake and what he thinks the photo's show. However, having considered everything the surveyor has said, and the video provided, I'm satisfied that the boat, including the running strake, was suffering from rot. I'm also satisfied that the damage was most likely caused by the rot and its condition shows it had not been maintained appropriately. Certainly Mr R had been completing some maintenance. But I think appropriate maintenance in this instance would have involved ensuring that the structure of the boat was not compromised by rotten timbers. That clearly hadn't happened.*

*I'm further satisfied that the boat, suffering significantly from rot, was not in a seaworthy condition. From everything the surveyor has said, it seems to me that if the boat had been seaworthy, the damage would not have occurred.*

*So Zurich has shown, to my satisfaction, that the damage to the boat was caused because it was suffering from wear and tear and gradual deterioration (rot) and it had not been appropriately maintained. Zurich has also shown to my satisfaction that the boat was not in a seaworthy condition and if it had been the damage would not have occurred. It follows that I find Zurich's decline was fair and reasonable. As such I'm not minded to make Zurich do anything differently.*

*I appreciate that Zurich's determination that the boat is not seaworthy may affect Mr R's ability to obtain insurance elsewhere. But I'm satisfied its view in this respect has been reasonably reached – it would be up to Mr R if he wanted to repair his boat and then seek his own report to evidence the boat's seaworthiness."*

*I've not received any objections to what I set out provisionally. I've reviewed matters. Having done so I find I am still satisfied, and for the same reasons provisionally stated, that Zurich's decline was fair and reasonable. As such my provisional findings are now those of this, my final decision.*

## **My final decision**

*I don't uphold this complaint. I don't make any award against Zurich Insurance Company Ltd.*

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 17 January 2025.

Fiona Robinson  
**Ombudsman**